

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MARKFORGED, INC.,

Plaintiff,

v.

DESKTOP METAL, INC.,

Defendant.

Civil Action No. 1:19-cv-11635-WGY

Oral Argument Requested

**DESKTOP METAL'S
MOTION TO COMPEL ARBITRATION**

Defendant Desktop Metal, Inc. (“Desktop Metal”) moves pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.*, to compel arbitration of all claims brought in the complaint filed on July 31, 2019 by Plaintiff Markforged, Inc. (“Markforged”). The grounds for this motion are that: (1) the strong federal policy favoring arbitration embodied in the FAA applies to the arbitration agreement at issue here; (2) the arbitration agreement delegates to the arbitrator all questions of arbitrability, so the arbitrator, rather than the Court, must decide whether this case is arbitrable; (3) even if this Court were to assess arbitrability instead of the arbitrator, all of the claims must be arbitrated because Markforged indisputably drafted and entered a valid agreement mandating arbitration and all of Markforged’s claims are covered by the arbitration agreement. Accordingly, the Court should, in its discretion, dismiss the case, *Dialysis Access Ctr., LLC v. RMS Lifeline, Inc.*, 638 F.3d 367, 372 (1st Cir. 2011), or in the alternative, stay the case pending arbitration, 9 U.S.C. § 3.

This Motion is based on this Motion, the concurrently filed Memorandum in Support, the

Declaration of Robert S. Shwarts and all exhibits attached thereto, all pleadings and papers on file in this matter, all matters of which this Court may take judicial notice, and upon such other matters as may be presented to the Court.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Desktop Metal believes that oral argument may assist the court on this motion and wishes to be heard. Desktop Metal respectfully requests oral argument on this motion.

Dated: August 21, 2019

Respectfully submitted,

/s/ Sheryl Koval Garko

Sheryl Koval Garko (BBO # 657735)

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Attorneys for Defendant Desktop Metal, Inc.

LOCAL RULE 7.1 CERTIFICATION

I certify that Desktop Metal, Inc. has complied with the provisions of Local Rule 7.1 by conferring with counsel for Markforged, Inc. on or about August 20, 2019. The parties were unable to agree with respect to the issues raised in the Motion and are thus at an impasse and require the Court's assistance to resolve the dispute.

/s/ Sheryl Koval Garko

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 21st day of August 2019.

/s/ Sheryl Koval Garko